



HOUSE OF REPRESENTATIVES

HB 2088

schools; assessments; surveys; informed consent

Prime Sponsor: Representative Finchem, LD 11

DPA Committee on Education

DPA Caucus and COW

X House Engrossed

OVERVIEW

HB 2088 prohibits public schools from administering specified surveys to students without notifying and obtaining written informed consent from parents and prescribes penalties for violations.

PROVISIONS

1. Requires all schools, school districts and charter schools to provide written notice and obtain written informed consent from parents before administering any survey that becomes part of the student's permanent education record and that solicits personal information about the student, the student's family or the student's household including:
 - i. Critical appraisals of another person the student has a close relationship with.
 - ii. Gun or ammunition ownership.
 - iii. Illegal, antisocial, self-incriminating or demeaning behavior.
 - iv. Income or other financial information.
 - v. Legally recognized privileged or analogous relationships.
 - vi. Medical history or information.
 - vii. Mental health history or information.
 - viii. Political affiliations, opinions or beliefs.
 - ix. Biometric information.
 - x. Quality of home interpersonal relationships.
 - xi. Religious practices, affiliations or beliefs.
 - xii. Self-sufficiency.
 - xiii. Sexual behavior or attitudes.
 - xiv. Voting history.
2. Limits a parent's written informed consent to the specific survey in the official written notice from the school, school district or charter school.
3. Requires consent only from the student, if the student is over 18.
4. Prohibits school districts, charter schools, schools, teachers or other school employees from surveying students or collecting student data on specified items without obtaining written informed consent from the parent.
5. Requires all applicable surveys to be approved and authorized by the school, school district or charter school.
6. Determines a school, school district or charter school to be liable for violations and subject to penalties and permits injured persons to commence civil action in superior court.

7. Prohibits teachers or school employees from administering applicable surveys without written authorization from the school, school district or charter school.
8. Applies requirements to all applicable surveys regardless of the stated purpose or quantity of questions that solicit applicable data, including written digital or verbal surveys or any other method of survey or data collection and national, state or multistate surveys.
9. Exempts private schools, mental health screenings or the identification of and programming for gifted students, assignments that do not become part of a student's record and classroom instruction and discussion on subjects within the purview of the course if the student's statements do not become a part of the student's educational record.
10. Prohibits penalties from being imposed on a student or a parent that does not participate in applicable surveys.
11. Prohibits participation in an applicable survey from being required to:
 - a. Demonstrate that a student has met competency requirements for any grade level, course or subject.
 - b. Qualify for placement into any grade level, course or subject including college or university placement tests.
 - c. Promote a student to the next grade.
 - d. Receive credit for any course or as part of a letter grade.
 - e. Graduate from high school.
 - f. Obtain a high school equivalency diploma.
 - g. Participate in any course, program or activity offered to students who participate in the applicable assessment or survey.
12. Allows a parent to elect in writing for their student to participate in applicable surveys.
13. Permits a parent to not respond to a written notice provided by the school district or charter school and determines those parents to have not consented to the survey.
14. Requires schools, school districts and charter schools to provide an alternative educational activity for students whose parents do not consent to participation in an applicable survey.
15. Requires students participating in alternative educational activities to be counted towards attendance and Average Daily Membership and prohibits those students from being counted absent.
16. Prohibits applicable survey responses from being included:
 - a. As part of a school academic performance indicator or similar rating system
 - b. In the Education Learning and Accountability System or similar system
 - c. In the Student Accountability Information System or similar system
 - d. In any school, administrator or teacher rating system
17. Prohibits penalties or rewards for teachers, administrators, school employees, schools, school districts or charter schools based on the student participation rate in applicable surveys.
18. Requires written notice by school districts and charter schools to be printed in at least 12 point font and:
 - a. Include the name of the school, school district or charter school that approved the survey, the name of the survey, the dates of administration, the method of collecting data, a statement of whether the collected data will be electronically transmitted from the computer or the location of administration, the approximate time the survey will be

- administered for, the type of data collected, the reasons for data collection and a statement that the parent's written informed consent is limited to the specific survey referenced in the notice.
- b. Require on the right side of the paper the parent's initials to affirmatively acknowledge:
 - i. Participation is voluntary and written parental consent required before the student participates in the survey.
 - ii. Students who do not participate will be provided an alternative educational activity
 - iii. Penalties will not be imposed against students or parents who do not participate.
 - iv. Whether the student's personally identifiable data will be aggregated, anonymous and deidentified.
 - v. The names of the federal and state agencies, institutions and third parties that have access to collected data, whether the parties will keep the data private or share it with other parties and whether the parties will destroy the data when the student is no longer serviced by the school, school district or charter school or when the student reaches 18.
 - c. Require and clearly provide space for the student's and parent's names, the parent's signature and the date of the signature.
 - d. Be invalid without all required information on the notice.
 - e. Be retained in physical or electronic form by the school district or charter schools for two years following the date of the survey.
19. Determines any school, school district or charter school that fails to comply with any requirements to be liable for the following damages to the injured party for individual action plus the costs of action and reasonable attorney fees:
 - a. For the first violation, at least \$250.
 - b. For the second violation involving the same student, at least \$500.
 - c. For a third or subsequent violation involving the same student, at least \$1,000.
 20. Permits the court or jury to award punitive damages in addition to prescribed penalties.
 21. Determines each violation to be considered a separate violation if it involves a different survey or a different version or administration of the same survey.
 22. Permits the injured party to commence civil action in superior court or request the Attorney General (AG) to commence civil action on their behalf.
 23. Requires the AG to respond within 30 days of a request to commence civil action.
 - a. Permits an injured party to proceed with civil action if the AG denies the request for representation.
 24. Requires the proceeds from monetary awards to be paid to the injured party.
 25. Requires damages to be assessed and paid in the case of an admission of guilt or a settlement before a formal conviction of a first or second violation.
 26. Requires any school, school district or charter school to be provided with an opportunity to cure a failure to comply with requirements within a reasonable time and without penalty.
 27. Prohibits student level nontest data from inclusion in longitudinal, student level data unless approved in a public Arizona State Board of Education (SBE) meeting and linked on SBE's website.

28. Requires SBE to ensure that adopted tests only collect types of nontest data that are approved by SBE in a public meeting and posted on the website.
29. Requires SBE to post in a prominent position on the home page of the website a link to nontest indicators.
 - a. Requires the web page to state the types of data collected, the reasons for collection and the entities with which the data is shared.
30. Requires Arizona Department of Education (ADE) contracts to state the date that student data is to be returned to ADE and destroyed by a third-party contractor.
 - a. Prohibits the contractor from sharing, selling or using student data in any way not stated in the contract with ADE.
 - b. Requires the contractor to certify under oath that the student data has been destroyed.
 - c. Determines the contractor to be liable for violations.
31. Determines third-party assessment contractors to assume all responsibility for any violation of law, whether intentional, unintentional or associated with any instrument offered by the contractor.
32. Requires contracts entered into between SBE or ADE and the contractor to specify:
 - a. The types of students level nontest data collected.
 - b. The date the data will be delivered to SBE or ADE and destroyed by the contractor.
 - i. Requires the date to be within 180 days after the collection of the data.
33. Prohibits contractors from:
 - a. Soliciting or collecting nontest data unless the data is approved by SBE and posted on the website.
 - b. Using student data for research or any other purpose not in the contract during the time the contractor possesses the data.
 - c. Selling student data.
 - d. Keeping or storing data after the contractual date of return.
34. Requires contractors to certify under oath that the data has been destroyed pursuant to the contract.
35. Determines contractors who fail to comply with requirements to be liable for at least the following damages, plus the costs of action and reasonable attorney fees:
 - a. For the first violation, \$250.
 - b. For the second violation involving the same student, \$500.
 - c. For the third or subsequent violation involving the same student, \$1,000.
36. Permits the court or jury to award punitive damages.
37. Determines each violation to be separate if it involves a different contract or administration of an assessment.
38. Permits injured persons to commence civil action in superior court or request the AG to commence action on their behalf.
 - a. Requires requests to be responded to within 30 days.
 - b. Permits the injured part to proceed with action of the request is denied.
39. Requires the proceeds from monetary awards to be paid to the injured person.

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- 40. Directs damages to be assessed and paid in the case of an admission of guilt or a settlement before conviction of a first or second violation.
- 41. Defines terms.
- 42. Makes technical and conforming changes.

CURRENT LAW

[A.R.S. § 15-102](#) requires governing boards, in consultation with parents, teachers and administrators, to develop and adopt policies regarding parental involvement in school. Included in those policies are requirements to adopt procedures to allow parents who object to learning material or activities due to harmful material to withdraw their children from the activity, procedures for parents to learn about and review the course of study and supplemental educational materials and procedures for parents to learn about their rights and responsibilities under the laws of the state.